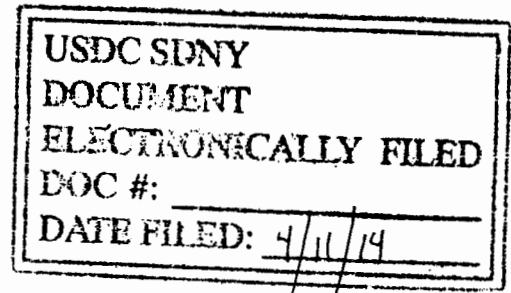


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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:
IN RE: METHYL TERTIARY BUTYL
ETHER ("MTBE") PRODUCTS
LIABILITY LITIGATION
----- :

ORDER

This document relates to:

Master File No. 1:00-1898

MDL 1358 (SAS)

M21-88

Commonwealth of Puerto Rico v. Shell Oil
Co. et al., 07 Civ. 10470
----- X

SHIRA A. SCHEINDLIN, U.S.D.J.:

In January 2014, Plaintiffs' expert, Anthony Brown, submitted a report and created visual models based on groundwater flow. Defendants object that Brown's report and models improperly include wells outside the delineated areas that were not subject to discovery ("Outside Wells").¹ Had Defendants known that Brown would include these wells, they would have conducted the necessary discovery before the December 20, 2013 fact discovery deadline.

¹ The Outside Wells are Villa Del Rey, Caserio 1, Munoz Rivera, Polvorin 2, UCAT 1, UCAT 2, Giron 1, PC 1, PC 5, PC 6, PRCM 2, Santiago 1, Western P-1, Alhambra East, Buena Vista, CAF 3, CAF 4, California, Can, Cuatro Calles 1, Flores, Rovira 1, Valle Verde, Sauri 1, Hacienda la Margarita, Cabo Rojo 1, Cabo Rojo 2, Cabo Rojo 3, Hospital Auxilio Mutuo, Gabriela Mistral, Sorbona, Ham 2, Ham 3. Plaintiffs argue that two of these wells — Hospital Auxilio Mutuo and UCAT 2 — should remain in the case because their capture zones reach inside the delineated areas. This distinction is irrelevant because these wells, like the other Outside Wells, were not subject to discovery.

To fairly respond to Brown's models, Defendants' experts would require real-world data on the wells' (1) actual pumping rates, (2) current operating status, (3) screen depth and length, and (4) hydraulic conductivity/geology in which the well is drilled.² Even after Plaintiffs gather and produce this information — assuming they are able to do so — Defendants' experts will need time to supplement their reports.

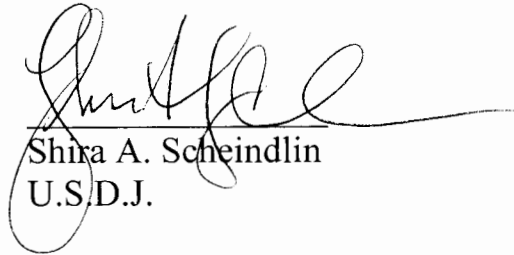
On April 7, Defendants submitted their expert reports, assuming the Outside Wells were out. The fact discovery deadline was December 20, 2013, and discovery cannot proceed endlessly in this seven-year-old case. Because expert discovery closes on May 30 and Defendants' experts would need extensive data to supplement their reports, Plaintiffs are ordered to strike the Outside Wells from Brown's report and modeling. The wells will be treated as in the *New Jersey* case. Brown may testify generally about the benefits of remediation.³ But he may not mention the Outside Wells unless Defendants open the door by asking him

² See 3/9/14 Letter from Lisa Gerson to the Court at 3-4.

³ See 12/5/12 Status Conference at 20:13-20 (COURT: "[Brown] is going to say one of the benefits of remediation is it stops the plume from continuing outside the perimeter where it is now. That's a perfectly fine opinion. You don't need to mention the words 'East Ridgewood well' and 'Salem well' and start taking about data and testing there.").

specifically about those wells on cross-examination.⁴

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
April 11, 2014

⁴ See *id.* at 21:10-14 (COURT: “I don’t think [Defendants] would open the door [during Brown’s cross-examination] and say, you haven’t named any places that it might hurt in the next ten miles, have you? They wouldn’t do that, because if they did, the trial judge I am sure would say, go for it.”).

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